

**RULES
OF
TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES
SOCIAL SERVICES DIVISION**

**CHAPTER 0250-7-9
DUE PROCESS PROCEDURES FOR RELEASE OF CHILD ABUSE RECORDS**

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0250-7-9-.01 SCOPE OF RULES. The rules in this chapter apply to individuals whom the Department of Children's Services identifies or proposes to identify as a perpetrator of physical, severe, or sexual abuse, as defined in Parts 1, 4, or 6 of Chapter I of Title 37 of the Tennessee Code Annotated. These rules shall further apply only when such identification is released or proposed to be released to: (1) the individual's employer whether the individual is a paid employee or under contract; (2) the licensing authority of the employer or the individual; or (3) any other organization with which the individual is associated as a paid employee or contractor, or volunteer; whether such individual is providing instruction, care, supervision, or treatment (a) in a child welfare agency as defined in T.C.A. §71-3-501 *et seq.*; (b) in a public or private school for children; (c) in a residential or institutional child caring organization; (d) through self employment; or (e) in any other organization. Such release shall be for the purposes of protecting children from further abuse and for the purposes directly connected with the administration of T.C.A. §§ 37-1-101 *et seq.*; 37-1-401 *et seq.*; 37-1-601 *et seq.*; 71-3-530.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a); 71-1-105 and 71-3-530. **Administrative History:** Original rule filed September 13, 1988; effective, October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.01 filed and effective March 25, 1999.

0250-7-9-.02 CLASSIFICATION OF REPORTS OF CHILD ABUSE AS "VALIDATED"; CRITERIA. A report of child abuse by the alleged perpetrator may be classified as "validated" if there is substantial and material evidence, in light of the entire record, which indicates the individual committed physical, severe or child sexual abuse, as defined in T.C.A. §§ 37-1-102 or 37-1-602. Proof of one or more of the following factors, linking the abusive act(s) to the alleged perpetrator, shall constitute substantial and material evidence, except for the factors in paragraphs (6), (7) and (8), which shall only be corroborative of other evidence:

- (1) Medical and/or psychological information from a licensed physician, medical center, or other treatment professional, that substantiates that child abuse occurred.
- (2) An admission by the perpetrator,
- (3) The statement of a credible witness or witnesses to the abusive act.
- (4) The child victim's statement that the abuse occurred. The following elements are typical of sexually abusive situations, and should be considered in assessing the weight to be given to the child's statement in cases where sexual abuse is alleged:
 - (a) History of Relationship.

(Rule 0250-7-9-.02, continued)

1. Multiple incidents occurring over a period of time. This situation is most common where the alleged perpetrator is a relative, friend, or caretaker of a victim.
2. Progression of physical touching, from activities that appear acceptable at first, but become sexual in nature.
- (b) Details of Abuse.
 1. Explicit knowledge of sexual activity. The victim relates explicit details of the sexual experience. This is especially relevant where the details are beyond the knowledge typical of a child of the victim's age.
 2. Richness of details, such as a location and/or time, even if a specific date is not given, or other details of the environment. For a preschool age child, such detail is not expected. As a child's developmental age increases, more detail is expected.
 3. Consistency. If the child is interviewed more than once, the responses and statements are generally consistent from one interview to the next. Parts of the story are corroborated by other circumstances and/or witnesses.
- (c) Secrecy. The child indicates that he/she was instructed, asked, and/or threatened to keep the abuse secret.
- (d) Coercion. Elements of coercion, persuasion, or threats to 'get the child to engage in the activity.
- (5) Physiological indicators or signs of abuse, including, but not limited to, cuts, bruises, bums, or broken bones.
- (6) Physical evidence which tends to substantiate the allegations, including, but not limited to, the following:
 - (a) Presence of child pornography or erotica such as child oriented books, magazines, article;
 - (b) Video equipment, cameras, photos, negatives, slides, movies, video cassettes, drawings of children;
 - (c) Personal letters and other correspondence from pedophiles;
 - (d) Diaries indicating sexual abuse occurred;
 - (e) Sexual aides (as described by child);
 - (f) Sexual "souvenirs"; (e.g., panties or other similar items belonging to the victim or other children);
 - (g) Lists of other victims, other offenders;
 - (h) Weapons, (as described by child);
 - (i) Bed, clothing, sheets, etc. which contain bodily fluids, pubic hairs and other physical evidence.
- (7) Behavioral indicators. Child abuse often leads to behavioral manifestations in the child victim. The existence of some or all of the following behavioral patterns may be indicative of child abuse in a given case, and corroborate other evidence of abuse as provided in these rules.
 - (a) Indicators in Children (Preadolescent).
 1. Stylized behavior: excessive seductiveness
 2. Unusual interest in sex organs of self or others (either children or adults)

(Rule 0250-7-9-.02, continued)

3. Fearful or suspicious of adults
 4. Tugging at clothing in genital area
 5. Tired, lethargic, sleepy appearance
 6. Regressive behaviors: such as whining, negative changes in toilet habits
 7. Persistent fears or overwhelming nightmares
 8. Blaming or dislike of self
 9. Change in school grades
 10. Public or excessive masturbation
 11. Developmental delays
 12. Child is perceived and/or treated by parent as “bad”, unusual, and/or “different”.
 13. Behavioral extremes (e.g.: extremely aggressive or passive; persistent crying)
 14. Child assumes parental role (i.e., caretaking of one or both parents, and/or siblings, beyond normal “role-playing” for child’s age)
- (b) Indicators in Adolescents.
1. Stylized behavior: excessive provocativeness beyond norm for the child’s age
 2. Shy, withdrawn, overburdened appearance
 3. Change In school grades
 4. Running away
 5. Self-destructive behavior
 6. Substance abuse that is mote than experimental
 7. Unwillingness to participate In group activities
 8. Stealing; shoplifting
 9. Pregnancy wishes
 10. Prostitution
 11. Fear or distrust of men, adults
 12. Statements about being “bad” or undesirable
 13. Wary of/avoidance of physical contact
 14. Excessive longing for affection
 15. Child assumes parental role, or role as spouse of parent (i.e., caretaking of one or both parents and/or siblings, beyond normal role-playing for child’s age)
- (8) Circumstantial evidence linking the alleged perpetrator to the abusive act(s) (e.g., child was in care of the alleged perpetrator at the time the abuse occurred and no other reasonable explanation of the cause of the abuse exists in the record).

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a) and 71-1-105. **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.02 filed and effective March 25, 1999.

0250-7-9-.03 WHEN RIGHTS UNDER THIS CHAPTER ATTACH; “TRIGGERING EVENTS.”

- (1) The rights to review and hearing set forth herein are triggered by the classification of an investigated report of physical, or severe, or child sexual abuse as a “validated” case together with the release, under emergency procedures under rule 0250-7-3-.09, or the intended release as otherwise permitted under these rules in non-emergency situations, of the name of any individual providing instruction, care, supervision, or treatment of children, identifying the individual as a “validated” perpetrator of physical or severe child abuse, or child sexual abuse, to: (1) the individual’s employer whether the individual is a paid employee or under contract; (2) the licensing authority of the employer or the individual; or (3) other organization with which the individual is associated as a paid employee, contractor, or volunteer; whether the individual is providing such instruction, care, supervision, or treatment (a) in a child welfare agency as defined in T.C.A. §§71-3-501 et seq.; (b) in a public or private school for children; (c) in a residential or institutional child caring organization; (d) through self-employment; or (e) in any other organization.
- (2) If no release procedure is begun under paragraph (1) above within two years of the classification of the report and the alleged perpetrator as “validated”, then no such release shall be undertaken as to that allegation. This shall not, however, require expunction of this information from the internal records of the Department.
- (3) The rights to review and hearing are not triggered by release of information concerning the alleged perpetrator from Department records to:
 - (a) Any state(s) or federal law enforcement agency(ies) investigating a report of known or suspected child abuse or neglect or any crimes involving children;
 - (b) Any state(s) District Attorney or United States Attorney(s) or their authorized assistants, of the judicial districts or agencies involved in investigating or prosecuting crimes against children;
 - (c) Any state(s) or federal grand jury by subpoena or presentation of evidence by the District Attorney or United States Attorney to such grand jury;
 - (d) Treatment professionals treating the child, his or her family, or the perpetrator;
 - (e) In-house requests by employees of the Department of Children’s Services for purposes consistent with enforcement of the child abuse and neglect or child welfare licensing laws of the State of Tennessee including disclosure to other individuals for purposes directly connected with the administration of Title 37, Chapter 1, Parts 4 and 6 or Title 71, Chapter 3, Part 5, of the Tennessee Code Annotated, other than disclosure to the employers, licensing authority other than the Department of Children’s Services, or other organizations, where validated perpetrators of child abuse are employed, licensed, or associated, providing instruction, care, supervision, or treatment for children;
 - (f) Any state(s) or federal social service or other agencies investigating cases of child abuse or neglect or providing treatment or care for alleged or known victims of child abuse or neglect;
 - (g) Any court official, probation counselor, parole officer, designated employee of any Department of Correction or other similarly situated individual charged with the responsibility of preparing information to be presented in any administrative or judicial proceeding concerning any individual charged with or convicted of any offense involving child abuse, child sexual abuse, or neglect;
 - (h) To the court, administrative board or hearing, the officials or employees thereof in the performance of their duties, the parties, or their legal representatives in any judicial or administrative proceeding or before any board or hearing officer for the purpose of protecting a child or children from physical or severe child abuse, neglect, or child sexual abuse, except in such situation when such court, administrative hearing, board, or hearing officer, other than the Department of Children’s Services, is adjudicating a case affecting the perpetrator’s ability

(Rule 0250-7-9-.03, continued)

to remain or become employed or licensed, in which situation such information shall be released only by order of the court or hearing officer.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a) and 71-1-105. **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.03 filed and effective March 25, 1999.

0250-7-9-.04 RIGHT TO NOTICE AND OPPORTUNITY FOR FILE REVIEW.

- (1) Except as otherwise provided in this chapter, any individual who is identified or is proposed to be identified as set forth in 0250-7-9-.01 as a perpetrator of child abuse in a “validated” report of child abuse investigated by the Department of Children’s Services, has the right to request and receive an informal “file review” of the case by the Commissioner or his/her designee to determine whether, under the standards provided in 0250-7-9-.02 the report is properly classified as “validated”.
- (2) Except as provided by rule 0250-7-9-.09 the Department will send written notice containing the information specified in paragraph (3) of this rule to the individual at his/her last known address within 10 days of the applicable “triggering event” specified in 0250-7-9-.03 Except as otherwise provided in this chapter under rule 0250-7-9-.09 during this 10 day period specified in paragraph (3)(b) of this rule or until expiration of the time specified in 0250-7-9-.07(2) the Department will not disclose to the individual’s employer or the organization in which the individual provides instruction, care, supervision, or treatment for children, or licensing authority of the employer or individual the fact that the individual is identified as a perpetrator of child abuse in a validated report as determined by the Department, but may disclose to those entities the fact that an investigation of the individual is occurring or has occurred.
- (3) The notice referred to in paragraph (2) must contain the following information:
 - (a) That the individual is identified as the perpetrator of child abuse in a “validated” report investigated by the Department of Children’s Services and that the Commissioner’s review has upheld the classification as “validated”.
 - (b) That he/she must contact the local Department of Children’s Services office, in writing, within 10 days of the date of the notice, in order to request the file review. A request for a hearing prior to completion of the file review will not be deemed a proper request for a hearing.
 - (c) That if the individual fails to request a review within 10 days of the date of the notice, he/she will be identified to his/her employer or licensing authority, or other organization in which the individual provides instruction, care, supervision or treatment of children, as the perpetrator of child abuse in a “validated” case.
- (4) If the individual requests a file review within the required time, the Commissioner or his/her designee will conduct the review specified in paragraph (1) of this rule, and make a determination of whether the report is properly classified as “validated” within 30 days of the date the individual requests the review, unless the proceedings are stayed pursuant to 0250-7-9-.06
- (5) If the individual fails to request a review within the required time frame, the individual will be deemed to have forever waived his/her right to a review or a hearing as provided in 0250-7-9-.05 in regard to the report. The validated report will then be available for dissemination to his/her employer, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment of children, for the purpose of protecting children from abuse. Provided, however, that the individual may be granted a review notwithstanding his/her failure to make a request within the time required by paragraph (3)(b), if said individual shows good cause for his/her failure to receive the notice referred to in paragraph (2). severe illness, or some other disabling condition which substantially prevented the individual from requesting a review within the required time limit.

(Rule 0250-7-9-.04, continued)

- (6) If the review results in a decision that the standards in 0250-7-9-.02 are not met, and that the report is, therefore, not properly classified as “validated” the Department will not release information from its records identifying the individual, as a perpetrator of child abuse to the individual’s employer or licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment for children. Nothing in these rules shall be construed to require the expunction of internal case records maintained by the Department.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a) and 71-1-105. **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.04 filed and effective March 25, 1999.

0250-7-9-.05 RIGHT TO NOTICE AND OPPORTUNITY FOR HEARING.

- (1) Except as otherwise provided in this chapter any individual who is identified or is proposed to be identified as set forth in 0250-7-9-.01 as a perpetrator of child abuse in a “validated” report investigated by the Department and who has requested and/or received a “file review” pursuant to 0250-7-9-.04 or 0250-7-9-.09 which review has resulted in the classification of “validated” report being upheld by the Department, has the right to request and receive an administrative hearing before a hearing officer of the Administrative Procedures Division of the Department. A request for a hearing prior to a timely request and receipt of a file review pursuant to 0250-7-9-.04 or 0250-7-9-.09 will not be deemed a proper request for a hearing.
- (2) The Department will send written notice containing the information specified in paragraph (3) to the individual at his/her last known address within 10 days of the date of the file review under 0250-7-9-.04 or 0250-7-9-.09 results in a decision that the report is properly classified as “validated”. Except as otherwise provided in rule 0250-7-9-.09 during this period, and until expiration of the 10-day period specified in paragraph (3)(b) of this rule or until expiration of the time specified in 0250-7-9-.07(2), the Department will not disclose the fact that the individual has been classified by the Department as a perpetrator of child abuse in a “validated” report, but shall only release the fact that a hearing concerning the individual pursuant to the child abuse laws of this State is pending.
- (3) The notice referred to in paragraph (2) shall contain the following information:
 - (a) That the individual is identified as the perpetrator of child abuse in a “validated” report investigated by the Department of Children’s Services and that the Commissioner’s review has upheld the classification as “validated”.
 - (b) That the individual has a right to a hearing, and that he/she must contact the local office of the Department of Children’s Services, in writing, within 10 days of the date of the notice, in order to request a hearing.
 - (c) That if the individual fails to request a hearing within 10 days of the date of the notice, he/she will be identified to his/her employer or licensing authority, or other organization in which the individual provides instruction, care, supervision or treatment for children, as a perpetrator of child abuse.
- (4) If the individual requests a hearing within the required time frame, the Department will schedule a hearing and give the individual adequate notice of the hearing, as provided in chapter 0250-5-4.
 - (a) The hearing will be held, and an initial order entered therein, within 90 days of the date of the notice required in paragraph (2), or in rule 0250-7-9-.09(3), if applicable, unless:
 1. The time limit is extended or waived by agreement of the parties, or for good cause shown; or
 2. The proceedings are stayed, pursuant to* 0250-7-9-.06
- (5) If the individual fails to request a hearing within the required time frame, the individual will be deemed to have forever waived his/her right to a hearing in regard to that report. The report will then

(Rule 0250-7-9-.05, continued)

be available for dissemination to his/her employer, or licensing authority, or other organization in which the individual provides instruction, care, supervision or treatment for children, for the purpose of protecting children from abuse. Provided, however, that the individual may be granted a hearing notwithstanding his/her failure to make a request within the time required by paragraph (3)(b), or by rule 0250-7-9-.09 if applicable if said individual shows good cause for his/her failure to do so. For purposes of this rule, "good cause" is limited to failure to receive the notice referred to in paragraph (2), severe illness, or some other disabling condition which substantially prevented the individual from requesting a hearing within the required time limit.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a) and 71-1-105. **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.05 filed and effective March 25, 1999.

0250-7-9-.06 STAY OF ADMINISTRATIVE PROCEEDINGS.

- (1) If the individual has been arrested or indicted on criminal charges or if a civil or other administrative proceedings alleging child abuse by the individual, who is the subject of proceedings under these rules, which charge or proceedings are derived from the same allegations resulting in a "validated" classification under these rules, have been initiated in any court or other administrative proceedings, the following provisions apply:
 - (a) If the arrest, indictment, and/or initiation of other judicial or other administrative proceedings occurs any time prior to the entry of the final order, all administrative proceedings under these rules will be immediately stayed pending final resolution (including appeals) of the judicial administrative proceedings. Provided, however, that the notice specified in 0250-7-9-.04(2), .05(2), or 0250-7-9-.09(3), as appropriate, will, notwithstanding the provisions of this subparagraph, be sent to the individual and the individual will be required to comply with the provisions of 0250-7-9-.04(3)(b), .05(3)(b), or 0250-7-9-.09(3)(a)2, as appropriate, in order to preserve any future right to a review or hearing. Except as otherwise provided in 0250-7-9-.09(3)(b), during the stay, the Department will release no information about the individual to the report in question, except that judicial or administrative proceedings involving allegations of child abuse by the individual are pending before a specified court or administrative proceeding.
 - (b) If a criminal prosecution results in a conviction or guilty plea for any offense listed in T.C.A. §37-1-602(a)(2), or for any act which would constitute child abuse or severe child abuse as defined in T.C.A. § 37-1-102(10) and (19), or if the individual is found guilty or pleads guilty to any lesser offense derived from the offenses or acts alleged under T.C.A. §37-1-602(a)(2) or T.C.A. §37-1-102(10) and (19), or if any court or administrative proceeding results in a judicial or administrative adjudication that the individual has committed, or has knowingly allowed to be committed, any act which would constitute physical abuse or severe child abuse, as defined in T.C.A. §37-1-102(10) and (19) or any act which constitutes child sexual abuse as defined in T.C.A. §37-1-602(2), then such conviction and/or adjudication will be conclusive evidence that the individual is the perpetrator classified in the "validated" report and the individual will have no right to a review as provided for in 0250-7-9-.04 or a hearing provided for in 0250-7-9-.05 in regard to that particular report and information on the perpetrator will be released as otherwise permitted under these rules.
 - (c) If the criminal and/or civil or administrative proceeding does not result in a conviction and/or finding as specified in (b) above, including pretrial diversion, this fact will be admissible in the administrative hearing, but will in no way be conclusive on the issue of whether the report is properly classified as "validated".
- (2) If administrative proceedings have been stayed pursuant to this rule, they will be reinstituted at the point at which they were stayed if the alleged perpetrator requests such in writing to the local office of the Department of Children's Services within 30 days of entry of a final order by a court or other

(Rule 0250-7-9-.06, continued)

administrative body favorably disposing of the issue of child abuse involving the alleged perpetrator or of any disposition other than guilty by a court in a criminal proceeding. If the alleged perpetrator fails to make such a written request within the required time period he/she will be deemed to have forever waived his/her rights to a hearing in regard to that report. The validated report and information regarding the perpetrator will be released as otherwise permitted under these rules.

- (3) Unless the individual has waived his/her rights to a review or hearing by failing to request same under paragraph (1)(a), if administrative proceedings have been stayed, the Department will send the individual written notice advising him/her of the following:
 - (a) That administrative proceedings have been stayed pending the final outcome of judicial or other administrative proceedings concerning allegations of child abuse involving the individual.
 - (b) That the administrative proceedings under these rules will be reinstituted at the point they were stayed only if the individual requests such in writing to the local office of the Department which issued the original notice within 30 days of the entry of a final order by the court or administrative tribunal or verdict by a criminal court [unless the order or verdict is as specified in paragraph (1)(b) above].
 - (c) If the individual fails to make such a written request within the required time period, he/she will be deemed to have forever waived his/her rights to a hearing in regard to the report.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a) and 71-1-105. **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.06 filed and effective March 25, 1999.

0250-7-9-.07 CONDUCT OF THE HEARING.

- (1) The hearing provided for in 0250-7-9-.05 will be conducted in accordance with the provisions of the “Uniform Administrative Procedures Act” and the rules of the Administrative Procedures Division of the Department of Children’s Services.
- (2) Except as otherwise provided in rule 0250-7-9-.09 the Department will not release the fact that the individual has been named as a perpetrator of child abuse in a “validated” report until the individual has exhausted all of his/her appeal rights under this chapter, up to, but not including judicial review unless a stay is ordered pursuant to T.C.A. §4-5-322(e), or until said rights are waived. In the interim, the Department shall release the fact that an investigation or hearing concerning the individual pursuant to the child abuse laws of the State is pending.
- (3) If the final order of the Department, or of a court of competent jurisdiction in the event of judicial review, is that the report is not properly classified as “validated”, according to the standards in 0250-7-9-.02 the Department will not identify the individual to the individual’s employer or licensing authority or other organization in which the individual provides instruction, care, supervision or treatment for children, as a perpetrator of child abuse. The Department, if it has indicated to the entity that its employee, or licensee or other person providing instruction, care, supervision or treatment for children who was under investigation was the subject of a “validated” report, will notify the entity of the fact that the report was not properly classified as “validated”. Nothing in this rule shall be construed to require the expunction of any information from internal case records maintained by the Department.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a) and 71-1-105. **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.07 filed and effective March 25, 1999.

0250-7-9-.08 EVIDENCE; STANDARD OF PROOF.

- (1) Admissibility of evidence in hearings pursuant to 0250-7-9-.05 is governed by the provisions of T.C.A. §4-5-313. Provided, however, that “evidence admissible in a court” shall, for purposes of hearings pursuant to this chapter, refer also to evidence admissible in any juvenile court of this state, pursuant to the Tennessee rules of Juvenile Procedure. Provided further that the evidentiary provisions of Title 24, Chapter 7, Part I of the Tennessee Code Annotated and T.C.A. §§37-1-401 et seq. and 37-1-601 et seq., including the use of videotape testimony, shall be applicable to such hearings.
- (3) In hearings pursuant to 0250-7-9-.05 the sole issue for the hearing officer to determine is whether the standards for classifying the report as “validated”, as provided in 0250-7-9-.02 have been met in that particular case. In making this determination, the hearing officer shall consider whatever relevant and admissible proof the individual offers that the report is not properly classified as validated and shall further consider any competent and admissible proof concerning the dynamics of child abuse relevant to whether the classification is proper.

Authority: T.C.A. §§4-5-226(b)(2); 4-5-313; 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a) and 71-1-105. **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.08 filed and effective March 25, 1999.

0250-7-9-.09 ALLEGED PERPETRATORS WITH CURRENT ACCESS TO CHILDREN; EMERGENCY NOTIFICATION.

- (1) The provisions of this rule apply to individuals identified as a perpetrator of child abuse in a “validated” report, who provide instruction, care, supervision, or treatment for children and who have access to children by virtue of his/her paid or contracted employment or volunteer work in a child welfare agency, as defined in T.C.A. §§71-3-501 et seq.; or his/her employment by contract or otherwise in public or private schools, residential or institutional child caring organizations; or in any other situation where the perpetrator is self-employed or is employed in an organization in any manner by others, or is a volunteer in any other organization providing instruction, care, supervision, or treatment for children.
- (2) As soon as reasonably possible after classification of a report under the circumstances specified in paragraph (1), the Department will conduct an ex parte file review of the report, as provided in 0250-7-9-.04
 - (a) In addition to reaching a determination as to whether the report is properly classified as “validated”, the Commissioner or his/her designee shall make a determination whether the report and investigation reveal an immediate threat to the health, safety, or welfare of a child or children exists.
 - (b) If such threat is found to exist, the Department will follow the procedures specified in paragraphs (3), (4), and (5) of this rule. If no such immediate threat is found to exist, the Department will follow the procedure specified in rule 0250-7-9-.05
- (3) As soon as reasonably possible after a determination has been made that an emergency situation exists, in that there is an immediate threat to the health, safety or welfare to a child or children as specified in paragraph (2)(a) above, the Department will, notwithstanding the provisions of 0250-7-9-.06 send written notice to both the alleged perpetrator and the child welfare agency, or other employer, person, licensing authority other than the Department of Children’s Services, or other organization with authority or supervision over the alleged perpetrator in the circumstances of paragraph (1) above, whether subject to licensure by the Department or not.
 - (a) The notice to the alleged perpetrator will contain the following information:

(Rule 0250-7-9-.09, continued)

1. That the individual is identified as the perpetrator of child abuse in a “validated” report of child abuse and that the Commissioner or designee has upheld the classification as “validated”.
 2. That the individual has a right to a hearing, and that he/she must contact the local Department of Children’s Services office, in writing, within 10 days of the date and the notice, in order to request a hearing.
 3. That if the individual fails to request a hearing within 10 days of the date of the notice, he/she will remain identified by the Department of Children’s Services to his/her employer, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment of children as a perpetrator of child abuse.
 4. A statement that the employer, agency, licensing authority, or other supervising organization over the individual or organization with which the individual is associated in providing instruction, care, supervision, or treatment has been notified of the situation, and a copy of the notice to the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment will be attached.
- (b) The notice to the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment shall contain the following:
1. That the named individual has been reported as perpetrator of child abuse, and that the Department has determined that the report is “validated”, pursuant to State rule 0250-7-9-.02
 2. That the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment for children must immediately take action to assure that the individual has no access to or contact with any child in their care until further notice by the Department.
 3. That if the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment for children fails to take such action, the Department will take action to suspend, revoke, or deny the agency’s license if it is licensed by the Department, or the Department will take such other action as may be necessary to protect the children, pursuant to T.C.A. §71-3-530.
 4. That the individual has been notified of his/her right to a hearing on the allegations, and that employer, agency, licensing authority, or other organization in which the individual provides instruction-, care, supervision, or treatment of children will be notified of the final decision in regard to. the allegations.
- (4) If the individual requests a hearing within the required time period, the provisions of 0250-7-9-.05(4) apply. If the individual fails. to request a hearing within the required time period, the provisions of 0250-7-9-.05(5) apply.
- (5) Following final resolution of the case, whether by administrative hearing, court order, or waiver by the alleged perpetrator, the Department will notify the employer, agency, licensing authority, or other organization in which the individual provides instruction, care, supervision, or treatment of children with which the individual is associated in writing of the decision.
- (a) If the classification of the report as “validated” has been upheld, the employer, agency, licensing authority or other organization in which the individual provides instruction, care, supervision, or treatment of children will be required to continue to assure nonaccess as provided in paragraph (3)(b)2, and the notice shall so state.
 - (b) If the classification of the report as “validated” is determined to have been incorrect, the employer, agency, licensing authority, or other organization in which the individual provides

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instruction, care, supervision, or treatment of children will not be required to assure nonaccess as provided in paragraph (3)(b)2, and the notice shall so state.

- (6) Except as provided in paragraph (3), the provisions of rule 0250-7-9-.06 are also applicable to proceedings under this rule.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a); 71-1-105 and 71-3-530. **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.09 filed and effective March 25, 1999.

0250-7-9-.10 PROHIBITED RELEASES.

- (1) The Department of Children's Services shall not release information from its records to identify to employers, agencies, licensing authorities other than the Department of Children's Services, or other organizations, for purposes of preemployment screening or licensing, the individual as a perpetrator of child abuse.
- (2) The Department of Children's Services shall not release information from its records to identify, for purposes of responding to a request from an employer, agency, licensing authority, or other supervising organization of an individual or other organization in which the individual provides instruction, care, supervision of, or treatment of children, for purposes of routine or random screening of current employees or associates of these organizations as to their status as perpetrators of child abuse. This shall not be construed to prevent the release of information identifying an individual as a perpetrator of child abuse, as otherwise permitted under these rules following a classification by the Department of Children's Services of a report of child abuse as "validated" and following exhaustion or waiver of review, hearing remedies, or under emergency release procedures set forth in rule 0250-7-9-.09

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a) and 71-1-105. **Administrative History:** Original rule filed September 13, 1988; effective October 28, 1988. Rule assigned a new control number, removed and renumbered from 1240-7-9-.10 filed and effective March 25, 1999.